

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(NORTHERN DIVISION)

UNITED STATES OF AMERICA
FOR THE USE AND BENEFIT OF
AMERICAN INFRASTRUCTURE-MD, INC.
2011 Belair Road
Fallston, Maryland 21047,

Plaintiff,

v.

INTERNATIONAL FIDELITY INSURANCE
COMPANY
2570 Boulevard of the Generals, Suite 125
Norristown, Pennsylvania 19403

SERVE: Therese M. Goldsmith,
Insurance Commissioner
Maryland Insurance Administration
St. Paul Plaza
200 Saint Paul Place
Suite 2700
Baltimore, Maryland 21202,

Defendant.

* * * * *

COMPLAINT

Plaintiff, the United States of America for the Use and Benefit of American Infrastructure-MD, Inc. ("AI"), by its attorneys, Adam C. Harrison, Jeffrey S. Rosenfeld and Harrison Law Group, sues Defendant, International Fidelity Insurance Company ("IFIC"), and for its causes of action, says:

Jurisdiction

1. AI is a corporation organized and existing under the laws of the State of Maryland with its principal place of business in Fallston, Maryland.

2. Upon information and belief, Defendant, IFIC, is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business in Norristown, Pennsylvania. IFIC is a commercial surety company that issues, among other things, payment and performance bonds on private and public construction projects in the State of Maryland.

3. This Court has jurisdiction pursuant to the provisions of the Federal Miller Act, 40 U.S.C. § 3133, as the bond upon which this Complaint is based was issued pursuant to the provisions of the Federal Miller Act, 40 U.S.C. § 3131.

4. Venue is appropriate pursuant to the provisions of the Federal Miller Act, 40 U.S.C. § 3133, as the construction project which is the subject of this Complaint is located in the State of Maryland.

Background Facts

5. Upon information and belief, Better Built Construction Services, Incorporated ("Better Built"), as general contractor, executed a construction contract (the "Prime Contract") with the United States of America, by and through the United States Army (the "Owner"), for the construction of a project referred to as the Infrastructure Upgrade, Gates 22 and 24, Aberdeen Proving Ground, Harford County, Maryland (the "Project") located in Aberdeen, Maryland.

6. As a condition of the aforesaid Prime Contract, and to secure the faithful performance of the same, Better Built, as principal, executed and delivered to the Owner, a labor and material payment bond (the "Bond"), with IFIC as surety, for the security of all subcontractors and suppliers on the Project, including AI. A copy of the Bond is attached hereto and incorporated by reference herein as **Exhibit "A"**.

7. On or about October 10, 2008, in anticipation of Contractor's performance of the Prime Contract, Contractor and AI entered into a subcontract (the "Subcontract") pursuant to which AI agreed to perform the asphalt paving and related subcontract services on the Project for

the lump sum price of One Million Four Hundred Thirty-One Thousand Five Hundred Thirty-Eight Dollars and No Cents (\$1,431,538.00). A copy of the Subcontract is attached hereto and incorporated by reference herein as Exhibit "B".

8. During the course of construction on the Project, AI at the request and direction of Contractor and pursuant to change orders to the Subcontract, rendered additional labor and/or materials for the Project for the price of Eight Hundred Ninety-Nine Thousand Eight Hundred Eleven Dollars and Forty-Seven Cents (\$899,811.47) (the "Change Order Work"). A copy of AI's most recent Application for Payment reflecting the change orders is attached hereto and incorporated by reference herein as Exhibit "C".

9. The aforementioned additional work resulted in a revised Subcontract price of Two Million Three Hundred Thirty-One Thousand Three Hundred Forty-Nine Dollars and Forty-Seven Cents (\$2,331,349.47). See Exhibit "C".

10. AI rendered the above-referenced labor and materials to the Project in good faith and in a good and workmanlike manner. Accordingly, Contractor became obligated to pay AI the sum of Two Million Three Hundred Thirty-One Thousand Three Hundred Forty-Nine Dollars and Forty-Seven Cents (\$2,331,349.47). To date, AI has been paid the sum of Two Million Two Hundred Eighty-One Thousand Five Hundred Seven Dollars and Eight Cents (\$2,281,507.08), and the amount of Forty-Nine Thousand Eight Hundred Forty-Two Dollars and Thirty-Nine Cents (\$49,842.39) remains due and owing from Contractor to AI for the labor and materials rendered by AI to the Project pursuant to the base Subcontract and approved change orders. A statement of account evidencing the amount remaining due is attached hereto and incorporated by reference herein as Exhibit "D".

11. Demand for full payment has been made but payment has not yet been received.

Count I
(Action on Payment Bond – IFIC)

12. AI adopts and incorporates by reference herein its averments contained in Paragraphs One (1) through Eleven (11) as stated above.

13. Better Built, as principal, and IFIC, as surety, executed and delivered the Bond to the Owner for the protection of all persons that furnished labor and/or materials on the Project.

14. Under the terms of the Bond, IFIC is liable to AI for all unpaid monies due and owing to AI on the Project.

15. As a result of the labor and materials rendered by AI to Better Built at the Project, Better Built became liable to pay AI the amount of Two Million Three Hundred Thirty-One Thousand Three Hundred Forty-Nine Dollars and Forty-Seven Cents (\$2,331,349.47), of which the principal amount of Forty-Nine Thousand Eight Hundred Forty-Two Dollars and Thirty-Nine Cents (\$49,842.39) remains due and owing to AI.

16. To date, Contractor has failed and refused to pay the outstanding balance and the sum of Forty-Nine Thousand Eight Hundred Forty-Two Dollars and Thirty-Nine Cents (\$49,842.39) remains due and owing to AI from Better Built, thereby triggering IFIC's liability to AI under the terms of the Bond.

17. All conditions precedent to bringing a claim on the Bond and to recovering under the Bond have been satisfied.

WHEREFORE, Plaintiff, The United States of America f/u/o American Infrastructure-MD, Inc., demands judgment against Defendant, International Fidelity Insurance Company, in the amount of Forty-Nine Thousand Eight Hundred Forty-Two Dollars and Thirty-Nine Cents (\$49,842.39), plus interest and court costs, and for such other and further relief as the Court deems just.

Respectfully submitted,


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FOR THE USE AND BENEFIT OF
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